

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #99-16**

**WARNING**

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

**SUBJECT**

Application of sales or use tax to acquisition of aircraft by commercial interstate or international air carrier.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

**FACTS**

[THE TAXPAYER] operates as a commercial interstate or international air carrier. The taxpayer is expanding its aircraft fleet for use in its operations as a common carrier[ ]. The taxpayer proposes to take delivery of some of these

aircraft in Tennessee. Some of these acquisitions of aircraft will take place between July 1, 1999 and July 1, 2001.

### QUESTIONS PRESENTED

1. Is the taxpayer's acquisition of aircraft for use in its operations as a common carrier during the period from July 1, 1999 through June 30, 2001 subject to the tax provided for by T.C.A. § 67-6-225(b)?
2. Is the taxpayer's acquisition of aircraft for use in its operations as a common carrier during the periods other than from July 1, 1999 through June 30, 2001 subject to the sales or use tax?

### RULING

1. The acquisition of aircraft by the taxpayer during this period is exempt from sales tax, as long as the taxpayer is a commercial interstate or international air carrier and uses the aircraft principally in interstate or international commerce.
2. The acquisition of aircraft by the taxpayer during these periods is exempt from sales tax, as long as the taxpayer is a commercial interstate or international air carrier and uses the aircraft principally in interstate or international commerce.

### ANALYSIS

Generally, the sales or use tax is levied on the sale or use of tangible personal property. In *Beecham Labs. v. Woods*, 569 S.W.2d 456 (Tenn. 1978) the Tennessee Supreme Court summarized a statement of legislative intent found in the statute, saying

It is the declared legislative intent that every sale or use of tangible personal property in Tennessee is subject to tax under the Retailers' Sales Tax Act, unless expressly exempted therein. T.C.A. § 67-3003 [now T.C.A. § 67-6-201]. *Id.* at 458.

The legislature has enacted a number of exemptions from the sales and use tax. One of these exemptions clearly applies to the taxpayer. T.C.A. § 67-6-302(a) states:

**There is exempt from sales or use tax, the sale, use, storage or consumption of aircraft owned or leased by commercial interstate or international air carriers, and parts, accessories, materials and supplies sold to or used by commercial interstate or international air carriers for use exclusively in servicing and maintaining such carriers' aircraft, which aircraft are used principally in interstate or international commerce.** This exemption shall not apply to fuel and other petroleum products or to shop equipment and tools.

(Emphasis supplied.) Under current law, it is clear that the taxpayer's acquisition of aircraft for use in its operations is exempt from tax.<sup>1</sup>

In 1998, T.C.A. § 67-6-225 was enacted. In addition to exempting certain aircraft from the sales or use tax, a provision which is not applicable to the question presented in the instant ruling request, subsection (b) of that section levies a reduced rate tax applicable to aircraft with a sales price in excess of \$100,000, as follows:

Notwithstanding any other provision of this chapter to the contrary, sales or use tax payable to the state with respect to aircraft shall be levied at the rate of sales tax levied on the sale of tangible personal property on the first one hundred thousand dollars (\$100,000) of the sales price of the sale or use of any single article of aircraft. The sales or use tax payable to the state with respect to aircraft shall be levied at the rate of three percent (3%) on the sales price in excess of one hundred thousand dollars (\$100,000) of the sale or use of any single article of aircraft. "Single article" has the same meaning as used in § 67-6-702(d).<sup>2</sup>

The question presented, then, turns on whether the reduced rate of tax levied by T.C.A. § 67-6-225 supersedes the exemption granted by T.C.A. § 67-6-302. Did the legislature, by enacting T.C.A. § 67-6-225, intend to repeal the exemption statute? It is recognized that it is possible for a statute to be repealed by implication, without being specifically mentioned in a legislative enactment. In *Oliver v. King*, 612 S.W.2d 152 (Tenn. 1981), the Tennessee Supreme Court stated:

Repeals of statutes by implication are not favored and there must be an irreconcilable conflict or repugnancy between the latter statute and the earlier statute that is plain and unavoidable to work a suspension of an earlier statute. [Citations omitted.] *Id.* at 154.

Further guidance is found in *State v. Moore*, 722 S.W.2d 367 (Tenn. 1986), where the Court observed:

Furthermore, a repeal or amendment "by implication is indicated . . . only when two statutes are manifestly repugnant or in irreconcilable conflict of substance; however, such repugnance or conflict will not be found where any fair and reasonable construction will permit the statutes to stand together." *Metropolitan*

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<sup>1</sup> The same analysis will also apply to aircraft acquired on or after July 1, 2001. See footnote 2 to this ruling.

<sup>2</sup> This provision is effective July 1, 1999 and is repealed July 1, 2001. Public Acts of 1998, ch. 976, § 3. It should be noted that the effective date of the repeal shown in the compiler's notes in the bound volume of the Tennessee Code Annotated is in error.

*Government of Nashville v. Hillsboro Land Co., Inc., supra*, 222 Tenn. at 440, 436 S.W.2d at 854. *Id.* at 374.

There are a number of statutes levying sales and use tax at a reduced rate. See, e.g., T.C.A. §§ 67-6-206, 67-6-216, 67-6-217. Some of these statutes use language similar or identical to the phrase as that found at the beginning of T.C.A. § 67-6-225(b), “[n]otwithstanding any other provision of this chapter to the contrary.” However, it is obvious that a reduced rate levy of tax can co-exist with a complete exemption from tax, when the complete exemption is applicable to a narrower class of transactions than the reduced levy. If the levy of a reduced rate of sales or use tax using this wording is considered as superseding or negating a total exemption, the effect of numerous exemptions would be lessened. It would appear that the legislature, in its use of this wording, did not contemplate such an effect.

Here, the enactment of the 1998 statute does not mention the earlier statute. There is no irreconcilable conflict or repugnancy between the two statutes. Therefore, there is no implied repeal of the exemption statute. Since the taxpayer’s acquisition of aircraft would be exempt under T.C.A. § 67-6-302, no tax is due under the provisions of T.C.A. § 67-6-225.

Owen Wheeler, Tax Counsel 3

APPROVED: Ruth E. Johnson, Commissioner

DATE: 5/14/99